



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**CHAUFFEURS, TEAMSTERS AND HELPERS
LOCAL UNION NO. 633 OF NEW HAMPSHIRE**

COMPLAINANT

v.

CASE NO. G-0124-1

DECISION NO. 2009-254

**HOOCKETT POLICE COMMISSION AND
CHIEF STEPHEN AGRAFIOTIS**

RESPONDENTS

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: November 18, 2009
Appearances: Complainant - William R. Cahill, Jr., Esq.
Respondent - James E. Higgins, Esq.
Background:

Chauffeurs, Teamsters and Helpers Local Union No. 633 of New Hampshire (Union) filed an unfair labor practice complaint against the Hooksett Police Commission and Chief Stephen Agrafiotis on October 16, 2009. The Union claims that the Respondents breached Articles 18 and 25 of the parties' Collective Bargaining Agreement (CBA), in violation of RSA 273-A:5, I (h) and (i), by terminating Officer Jason Defina without just cause, by ignoring steps 1 through 4 of the grievance procedure, and by appointing, without any statutory authority, a substitute commission to hear Mr. Defina's grievances.

The Union requests that the PELRB find that the Hooksett Police Commission and Chief Agrafiotis committed the unfair labor practices, including but not limited to violations of RSA 273-A:3 and RSA 273-A:5 (h) and (i); order that Mr. Defina be returned to duty with no loss of benefits or wages; order that the Hooksett Police Commission and Chief Agrafiotis abide by the CBA; and award the Union its attorney's fees and costs related to this action.

The Respondents filed an answer to the complaint on October 30, 2009. The Respondents deny the charges and claim, inter alia, that the PELRB lacks jurisdiction to consider the charge that Mr. Defina was discharged without just cause because this issue is currently the subject of grievances filed pursuant to the CBA's grievance procedure; that no claim has been stated against Chief Agrafiotis because the Police Commission, not Chief Agrafiotis, discharged Mr. Defina and is responsible for the operations of the Hooksett Police Department; and that no claim has been stated against the Respondents for a violation of RSA 273-A:5 (i).

The Respondents request that the PELRB dismiss the Union's complaint with prejudice and award reasonable costs and attorney's fees.

On November 18, 2009 the representatives for the Complainant and the Respondents attended a pre-hearing conference at the PELRB offices in Concord. At the pre-hearing conference, the Complainant's representative indicated that the Complainant intends to file a motion to continue the hearing.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the PELRB has jurisdiction to consider the charge that Mr. Defina was discharged without just cause.
2. Whether the Hooksett Police Commission committed an unfair labor practice by discharging Mr. Defina.

3. Whether the Hooksett Police Commission was empowered to appoint a substitute commission to hear Mr. Defina's grievances resulting from his discharge.
4. Whether Chief Agrafiotis' alleged actions and conduct with regard to Mr. Defina's termination constitute an unfair labor practice.

WITNESSES

For the Complainant:

1. Chief Stephen Agrafiotis
2. Lt. Troy Cline
3. Peter Drykacz
4. Jason Defina
5. Lori Stowell

For the Respondents:

1. Captain Paul Cecilio
2. David Gagnon
3. Henry Roy
4. Francine Swafford

Both parties reserve the right to amend their Lists of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective lists will be available at the hearing.

EXHIBITS

Joint and Agreed:

1. The parties' Collective Bargaining Agreement, 6/18/2007, amended 8/21/2007
2. Motion of Commissioner Gagnon to terminate Jason Defina, 9/8/2009
3. Letter of Chief Agrafiotis to Hooksett Police Commission, 8/26/2009
4. Chapter 412, Laws of 1975
5. Chapter Two, Standard Operating Procedures p-250 Development of Discipline Hooksett Police Manual
6. Hooksett Police Department, Non-supervisory Performance Evaluation, Jason Defina, 7/13/2009
7. Memo from Lt. Cline to Chief Agrafiotis, 8/14/2009

8. Second memo from Lt. Cline to Chief Agrafiotis, 8/14/2009
9. Memo from Captain Cecilio to Chief Agrafiotis, 8/17/2009
10. History of discipline, Jason Defina
11. Hooksett Police Commission minutes of August 18, 2009 and September 8, 2009

Both parties reserve the right to amend their Lists of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

DECISION

1. "Parties" means the named complainant and respondent or the counsel/representative appearing in the case.
2. The Union shall file a motion to continue, if any, in accordance with the requirements of Pub 201.08, no later than **November 24, 2009**.
3. The parties shall file a Statement of Stipulated Facts no later than **10 days** prior to the scheduled adjudicatory hearing.
4. The parties shall amend, exchange, and file their Witness and Exhibit lists no later than **10 days** prior to the scheduled adjudicatory hearing.
5. The parties shall pre-mark any exhibits prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.03.

HEARING

Unless otherwise ordered as a result of the filing of a motion to continue or other motion, the adjudicatory hearing between the parties will be held on **December 2, 2009 at 9:30 AM** at the offices of the Public Employee Labor Relations Board in Concord. In the event that the

presently scheduled adjudicatory hearing shall be continued, all time references as appear in paragraphs 3, 4, and 5 of the DECISION SECTION shall be based upon the rescheduled date for the adjudicatory hearing. The time set aside for this hearing is 6 hours. If either party believes that additional time is required, a written notice of the need for additional time shall be filed with the PELRB at least **7 days** prior to the date of hearing.

So ordered.

November 18, 2009


Karina A. Mozgovaya, Esq.
Staff Counsel/Hearing Officer

Distribution:

William R. Cahill, Jr., Esq.

James E. Higgins, Esq.